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11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

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14 BRANCH BANKING AND TRUST
15 COMPANY, a North Carolina banking
corporation,

16 Plaintiff,

17 vs.

18 JONES/WINDMILL, LLC, a Nevada limited
liability company, YOEL INY; NOAM
19 SCHWARTZ; YOEL INY, Trustee of the Y&T
INY FAMILY TRUST dated June 8, 1994;
20 NOAM SCHWARTZ, Trustee of the NOAM
SCHWARTZ TRUST dated August 19, 1999;
21 D.M.S.I., L.L.C., a Nevada limited liability
company; and DOES 1 through 10, inclusive,
22

23 Defendants.

CASE NO. 2:12-cv-00452-JCM-GWF

**STIPULATION AND ORDER
REGARDING TRIAL**

24 Plaintiff BRANCH BANKING AND TRUST COMPANY ("BB&T" or "Plaintiff"), by
25 and through its counsel of record, and Defendants JONES/WINDMILL, LLC; YOEL INY;
26 NOAM SCHWARTZ; YOEL INY, Trustee of the Y&T INY FAMILY TRUST dated June 8,
27 1994; NOAM SCHWARTZ, Trustee of the NOAM SCHWARTZ TRUST dated August 19,
28

1999; and D.M.S.I., L.L.C., (collectively “Defendants”), by and through their counsel of record, hereby as follows:

1. Defendants waive their right to a jury trial as to the issue of the amount of indebtedness owed as of the date of foreclosure, which is the only remaining issue on which the Court has determined that Defendants are entitled to a jury trial¹, and consent to the adjudication of this issue by the Court.²

2. Accordingly, Plaintiff and Defendants agree to vacate the jury trial set to commence on August 10, 2015 and respectfully request that the Court reset this action for a bench trial to adjudicate all remaining issues in the case.

3. Plaintiff and Defendant do not agree on all issues of fact or law remaining to be adjudicated at trial. Plaintiff has filed two motions in limine [Documents 122 and 123] seeking clarification as to the issues to be addressed at trial, which remaining pending before the Court. The parties positions are as follows:

- a. Plaintiff believes that all issues have been adjudicated except the amount of the deficiency judgment, which shall be determined according to Nevada Revised Statutes (“NRS”) 40.451, *et. seq.* To determine the deficiency judgment as set forth in NRS 40.459, there must only be a determination of the fair market value of the subject property on the date of the trustee’s sale pursuant to NRS 40.457 and the amount of the “indebtedness” as defined by NRS 40.451.
- b. In addition to the foregoing issues identified by Plaintiff, Defendants believe other issues remain unresolved. These issues include (i) the calculation of interest claimed due by Plaintiff, (ii) the application of any offset or reduction to interest claimed due by Plaintiff as a result of uncertainty or manipulation of the LIBOR rate; and (iii) Plaintiff’s mitigation of damages and delays in foreclosing on the

¹ See Order [Document 131] Granting Plaintiff’s Emergency Motion for Clarification Regarding Trial.

² For the sake of clarity, Defendants do not waive their demand for a jury trial as to any other issue or waive their right to appeal the Court’s Order [Document 131] Granting Plaintiff’s Emergency Motion for Clarification Regarding Trial.

subject property and the resulting impact on the fair market value of the subject property.

The Parties enter into this Stipulation in good faith and not for the purpose of delay.

DATED this 6 day of August, 2015.

DATED this 12 day of August, 2015.

KOLESAR & LEATHAM

HOLLAND & HART

By 

By 

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Attorneys for Defendants

Attorneys for Plaintiff

Jury trial presently scheduled to begin on Monday, August 10, 2015, is hereby vacated.

IT IS SO ORDERED:


UNITED STATES DISTRICT JUDGE

Dated: August 7, 2015

Respectfully Submitted:
KOLESAR & LEATHAM

By 

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